Previous references.

File No. 30-09

1909.

Courts)

Serial Nos. 1-2

Later references.
3411 of same file
Ch 249-10.
Ch 242-12 1-2

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1-2

Part B. for September 1909

SUBJECT.

Revised draft Rule of Practice re calenders in Criminal cases.

Table of contents

From the Registrar chief Court of Mysore No. 400/24 dt 23-7-09.
Forwards for approval of Government a draft rule of Practice proposed to be issued in Supercession of the existing rules regarding the preparation and Submission of calendars in criminal cases.

2. To the Registrar, chief Court No. J 625 dt 28-8-09
Approves of the above Rule of Practice

G.R.S. 11] 1909-10.

GENERAL AND REVENUE SECRETARIAT.

(Courts _)

NOTES.

GS_ File No. 30-09

FILE HEADING.

Revised draft Rule of Practice re Calendars in Criminal Cases_

From

The Registrar of the Chief Court of Mysore

No. 400/24 Dated 23.7.09 Received 26.7.09_

Diary No. 1251 | Enclos. 2 · Spare Copies | Serial No. 1

BRIEF ABSTRACT OF LETTER.

Forwards for the approval of Govt a draft Rule of Practice proposed to be issued in supersession of the existing rules regarding the preparation and submission of Calendars in Criminal Cases_

NOTES AND ORDERS.

1- The existing rules are printed at pages 13 to 18 of the Criminal Digest. Subd proposed. The main differences between this & the proposed rules are noted in pencil in the margin of each.
27.7.09 SN

2- The only important change is that 1st class Magts (including Sub Div'l Magts)

Notes—First sheet

GPB—30,000—3-4-07.

Serial No.

will have to Submit their Calendars to the Sessions Judge that the District Magte. The latter is to continue to Submit his own Calendars to the Chief Court.

3 Some additional instructions have been made to the instructions issued to Judges in regard to checking of Calendars.

4 The new Rule of Practice may be approved.

31/7/09. S.H.

1510 6.09

2nd Cy

5 Can you get information about the number of Calendars received in the Chief Court & No. of Cases in which revn or other proceedings were passed on perusal of Calendars &c — say for 3 yrs? Is this info in the Exc adm Reports?

3/8/09

Office Assistant S.H.

6/8/09

P.J.O

15 6/8.

NOTE—Contn. sheet.

GPB—50,000—13-5-08

Serial No. 6

The following figures are extracted from the Administration Report. Please note that the last Column re details of disposal is with reference to the persons concerned in the Revision

Year.	No of Calendars Submitted to Chief Court.	No of Revision cases for disposal by the Chief Court.	No of persons whose cases were disposed of.
1905-06	3693	166	203
1906-07	3664	149	223
1907-08.	3181	116.	282

HCS 10.8.09 SW 10/8/09

7 I believe the Chief Court makes some distinction between a Revision "Case" and a Revision "Petition". Please ascertain if the figures in the 2nd Col. above refer to disposals on perusal of Calendars (and not on petitions by parties).

10/8/09 Stt

Subd C

Subd C It is ascertained that all Revision "petitions" are dealt with under the head "Applications" in the Administration Report. The figures in Column 2 relate exclusively to Calendars

HCS 13.8.09 SW 13/8 2nd C/ 14/8/09 Stt

1666

NOTE—Contn. sheet.

GPB—50,000—13-5-08

Serial No.

9 From the figures it is seen that the Chief Court finds errors in about 4 P.C. of the Calendars submitted to it. The proposal is that henceforth, ~~the~~ ~~of~~ Copies of judgments and orders of 1st Class Magtes (other than Dist Magtes) need not be sent to the Chief Court ~~as~~ through the Dist. Magtes. The Sess. Judges were getting only the Calendars & Copies of judgts of Cases exclusively triable by the Court of Session. Hereafter they are to get and examine ~~all~~ Copies of all judgts of 1st cl. Magtes. (1) This supervision would be quite sufficient, and D. Magtes and Sess. Judges ~~may~~ especially the latter may well be trusted to notice errors. It must also not be forgotten that at present parties are quite alive to their interests — in a much larger degree than when the Criminal Codes were originally introduced — and Magtes ~~expected to~~ usually present pe-

GPB—50,000—13-5-08

Serial No.

tutions for revision wherever there is the least chance of an error being discovered.

11 Inspections of Courts give the Judges of the Chief and other Superior Courts chances of detecting errors and issuing correct instructions about the way in which rules of practice are being properly observed. (Draft of approval may be put up by the Office.

Dewan. 15/8/09

15 Yes Letters are drafted by [illegible] 16/8/09

16 Submitted with a draft order Yes 17.8.09 17/8/09.

17/8/09

14) Orders) Drafts approved 17/8/09

15 issued 24/8/09. 13/8/09.

3/9/09 24/13 (16.8.09) Sec'y 18.8.09

Note—Contra Sheet.

GPB—50,000—13-5-08

G. R. S. 12]
General and Revenue Secretariat.

Ch File No. 30 of 1909-10.

Serial No.	
2	To the Registrar of the Chief Court of Mysore, dated 16th & 28th Aug. 09. Approves of the above Rule of Practice

NOTE—Contn. sheet.

GPB—50,000—13-5-08

1909-10. 9.2.57

From

The Registrar of the
Chief Court of Mysore.

To

The Secretary to the Government
of Mysore, Genl. & Rev. Depts.

Dated 23rd July/09

Despatched 24th —

Received

General No. 400

No. 24

Enclosure No. two.

Requests the appr
-al of Govt. to the en
-closed draft Rule
of Practice in rega
-rd Calendars prep
-ble issued in subs
-tution of C.P. No: 58
1-9-1892 R.P. No: 64
12-1-1899 & C.L. No:
10-3-1891.

No. 400/24 Enc: 2

23d/24" July 1909

From

The Registrar
Chief Court of Mysore,
Bangalore.

To

The Secretary to Government,
Gl and R v: Departments.

Sir,

I am directed to request the approval of Government to the enclosed draft Rule of Practice in regard to Calendars proposed to be issued in supersession of R. P. No 58 dated 1st September 1892, R. P. No 67 dated 12th January 1899 and C. L. No 94 dated 10th March 1891.

2 In consolidating the rules, provisions which have become obsolete by change in, or operation of, law have been omitted.

3 According to the fourth rule, Calendars of cases disposed of by first class Magistrates will be submitted to Sessions Judges through District Magistrates instead of to the Chief

Court

Court. Sessions Judges complain that they have no opportunity of Checking the work of Subordinate Magistrates.

1 A Copy of the C. L. No 94 proposed to be cancelled is enclosed.

I have the honor to be,

Sir,

Your most obedient Servant,

Registrar.

EE

In the Chief Court of Mysore

Criminal side.

Rule of Practice No dated.

In supersession of R.P. No 58 dated 1st September 1892, R.P. 67 dated 12th January 1899 and C.L. No 94 dated 10th March 1891, the Chief Court under section 554 of the Code of Cr. Procedure and with the sanction of Government, issues the following rules for the submissi of calendar

Calendars.

Original Jurisdiction.

1. Sessions Judges — : Courts of Sessions Judges will transmit to the Chief Court copies of all judgments and orders, together with a tabular statement in the annexed form, within 48 hours after the date of pronouncing judgment or order in each case.

2. District Magistrates & District Magistrates will forward to the Chief Court, copies of all their judgments and orders, together with a tabular statement in all cases tried by them, including proceedings held under Chapters 8, 10, 11, 12 and 36 of the Code of Criminal Procedure, within 24 hours after pronouncing the judgment or order.

3. Sub-Division Magistrates and 1st Class Magistrates —: Sub-Division Magistrates and all First Class Magistrates will submit copies of judgments and orders, together with a tabular statement to the District Magistrate, in all cases tried by them, including the proceedings held by them under Chapters VIII, X, XI XII and XXXVI of the Criminal Procedure Code, within 24 hours after the close of the trial.

4. District Magistrates will, after perusal, forward them without delay to the Sessions Judge with a note showing what action (if any) has been already taken.

5. All Second and Third Class Magistrates will submit copies of judgments and orders passed by them, together with the prescribed statements, to the District Magistrate, and when there is a Sub-Division Magistrate, through such Magistrate, within 24 hours after the close of the trial. In the latter case the Sub-Division Magistrate will, after examining the statements, judgments and orders, forward them to the District Magistrate, bringing at the same time to the notice of the District Magistrate any errors or irregularities in the proceedings of the Subordinate Magistrate

6. If an order of discharge is passed by a District Magistrate, under section 209 of the Code of Criminal Procedure, a copy of the order will, in the first instance, be submitted to the Sessions Judge. If the order is passed by any other Magistrate, he will forward it to the District Magistrate, who will, without unnecessary delay, forward it to the Sessions Judge. Sessions Judges will forward these copies after perusal to the Chief Court.

7. Statements need not accompany copies of judgments or orders when cases are compounded, or are permitted to be withdrawn, or when they are dismissed for default of the complainant's appearance. -

8. Sessions Judges and District Magistrates to whom copies of judgments are submitted, will carefully examine them and report at once to the Chief Court any cases which, in their opinion, may call for revision.

Appellate Jurisdiction

9. A copy of every judgment or order passed by Sessions Judges in the exercise of their appellate jurisdiction and a copy of every miscellaneous order passed by them under the provisions

provisions of the Criminal Procedure Code, finally disposing of any matter sub judice, will be submitted to the Chief Court within 48 hours after the passing of the same.

10. A copy of every judgment or order passed by District Magistrates in the exercise of their Appellate jurisdiction and a copy of every miscellaneous order passed by them under the provisions of the Criminal Procedure Code, finally disposing of any matter sub judice, will be submitted to the Chief Court within 48 hours after the passing of the same.

11. Copies of judgments on appeal and of miscellaneous orders of the kind referred to in para 10 above passed by Sub-Division Magistrates and First class Magistrates, will be submitted within 48 hours to the District Magistrate. The District Magistrate, after examining them, will forward them without delay to the Sessions Judge.

12. A copy of judgment passed on appeal which, under paras 9, 10 and 11 is required to be submitted to the Chief Court or the District Magistrate, shall invariably be accompanied by a copy of the judgment or order appealed against together with the statement accompanying such judgment or order.

13 The following are some of the points which Sessions Judges and District Magistrates will particularly notice when exercising their powers of supervision.

(a) The rash or unnecessary issue of process.

(b) The dealing with disputed claims of right under color of a charge of Criminal trespass or mischief and convictions for these offences without a finding as to the criminal intent.

Fresh additions

(c) The suitability of the punishments inflicted on youthful offenders.

(d) The judicious or injudicious use of the powers conferred by section 250 and section 562 of the Code.

(1) Compensation for frivolous Complaints

(2) Releasing first offenders on probation

(e) The indiscreet imposition of fines beyond the means of offenders.

(f) The light punishment, by inferior Courts, of offences requiring severe sentences in cases which ought to have gone up to superior courts for enhanced punishment.

(g) The imposition of heavy fines in addition to imprisonment with a view, in default of payment, to extend the term of imprisonment beyond the ordinary powers

of

of the Magistrate to inflict.

(h) The exaction of excessive bail or excessive security for keeping the peace or for good behaviour.

(i) Unnecessary delay in the disposal of cases.

Form No 80
Criminal

Calendar of persons tried before the Court of

(1) Serial Number.

(2) Name of Complainant.

(3) Name of Accused.

(4) Father's Name.

(5) Caste.

(6) Calling.

(7) Age

(8) Residence.

(9) Offence complained of

(10) Date of occurrence.

(11) Date of Complaint or Report.

(12) Date of Arrest by the Police

(13) Date of First appearance before the Court.

(14) Date of Commencement of Trial

(15) Date of Close of Trial.

(16) Result of Trial.

(17) Number of Adjournments

(18) Explanation of delay & remarks

Magistrate.

Instructions.

1. If the number of accused be large and the space against 3. Name of accused 4. Father's name. 6. Calling and & Residence be found insufficient, the particulars may be entered in a separate sheet of paper and appended to this. newly added.

2. Explanations of delay should invariably be given if the interval between the date of appearance of the accused and the date of Judgment or sentence is more than a fortnight.

3. If the case is received by transfer from another Court, the date of the first appearance of the accused and the number of adjournments in that Court, as well as the particulars of previous conviction will be noted against 18. "Explanation and Remarks"

4. In the case of arrest, whether the accused was detained in custody or released on bail should invariably be stated under "remarks" and in the latter case, the date of release should also be given.

5. In No 16 "Result of Trial", Note.

Discharged under Section

Acquitted under Section

or convicted under Section

and sentenced to

IN THE CHIEF COURT OF MYSORE AT BANGALORE.

CRIMINAL SIDE.

Circular Letter No. 94, *dated* 10*th March* 1891.

To

All Sessions Judges and District Magistrates.

SIR,

I am directed to state that whenever you call for records upon perusal of judgments or orders passed by the Subordinate Courts, the calendars should not be detained in your office till the records are received and perused by you, but should be passed on to this Court without delay, in accordance with the Rule of Practice No. 52, dated 12th March 1890, any remarks or proceedings passed by you on examination of the records being submitted in due course.

By Order,

S. HAMAJEE ROW,

Registrar.

25

G.R.S.-28

Cs File No 30-09

Serial No. 2

Diary No. of letter replied to—

Proceedings of the Government of His Highness the Maharaja of Mysore.

GENERAL AND REVENUE SECRETARIAT.

Courts.

190

Date of issue 28/8/09.

Signed by Mr. H.S. Chandrashekar Iyer
fair copy by Mr C.R. Balasundaram Iyer.

ORDER THEREON.—No.

READ— Letter No $\frac{400}{24}$ dated the 23rd July 1909, from the Registrar of the Chief Court of Mysore, forwarding for the approval of Govt a draft Rule of Practice proposed to be issued in supersession of the existing rules regarding the preparation and submission of Calendars in Criminal cases. (~~Proceedings No. R.P.~~)

Order thereon d:—

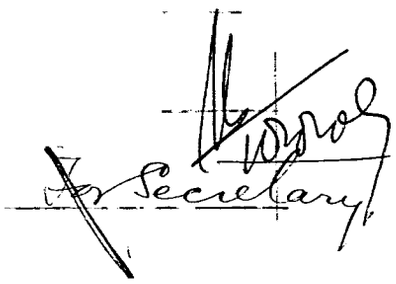
J/635-
Cs 30-09-2 The draft Rule of

over

SUBJECT

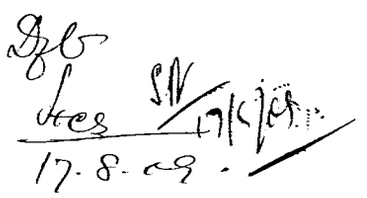
GPB—6,000—13-5-08

Practice, received with the letter read above is approved.



To

The Registrar of the Chief Court of Mysore



Original

1909-10

FILE No. 28 OF 1909-10.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

PROCEEDINGS OF THE GENERAL AND REVENUE DEPARTMENT

JUDICIAL AND LEGISLATIVE. (LEGISLATION)

JANUARY 1911.

"A" Collection Serial Nos. 1-9

Subject :—*Civil Disabilities of Christian Converts in Mysore.*

TABLE OF CONTENTS.

Serial No. of File.	Number and date of letter and contents.	Reference	Page in A Progs.
1	No. 4936, dated 27th July 1909, from the First Assistant to the Hon'ble the Resident in Mysore. States that in consequence of a recent case (decided by the Munsiff of Tumkur in 1907) the question of legislation to remove the disabilities of Christian converts has been revived; asks to be furnished with the record of the above case for transmission to the Secretary of State; enquires if a case similar to the above was ever brought before the Courts of the State during the days of the Commission; points out the desirability of legislation so as to make the law in Mysore more in accordance with the principles of modern justice and concludes by saying that in any case it is necessary that the fundamental rights and liabilities of British subjects residing in Mysore should be ensured.		
2	No. Pol. 648, dated 4th February 1910, to the First Assistant to the Hon'ble the Resident in Mysore. Forwards printed spare copies of the records of the Tumkur case and states that the measure will be dealt with in the Legislative Council and the result communicated to the Residency in due course and that the question of protecting the rights of British-Indian converts residing in Mysore will be discussed after the result of the deliberation of the Bill in the Legislative Council is known.		
3	No. 889, dated 12th February 1910, from the First Assistant to the Hon'ble the Resident in Mysore. States that the further communication promised in the above will be awaited and requests to be furnished, as already desired, with particulars of any case similar to the Tumkur case which occurred during the administration of the State by the British Government.		
4	No. J. 2523, dated 26th February 1910, to the Registrar, Chief Court. Requests him to furnish Government with particulars of cases, if any, similar to the Tumkur case which occurred in any of the Courts during the administration of the State by the British Commis-		

Serial No. of File	Number and date of letter and contents	Reference	Page in A Progs.
5	No. J. 2643, dated 8th March 1910, to the Deputy Commissioner, Mysore District. Requests him to forward a copy of the letter forwarded by him in 1901 explaining the circumstances under which a real case of hardship arising out of conversion to Christianity is said to have been reported in Mysore.		2
6	No. 669, dated 17th March 1910, from the Deputy Commissioner, Mysore District. Forwards the draft of a D. O. addressed by him to Government in 1901 and referred to in the printed collection on the subject.		3
7	No. 4616—271, dated 25th April 1910, from the Registrar, Chief Court. States that no case similar to that decided by the Munsiff of Tumkur in O. S. No. 1016 of 1906-07 has been filed either in the Chief Court or in the Court of the Judicial Commissioner or in any of the subordinate Courts.		3
8	No. Pol. 972, dated 18th May 1910, to the First Assistant to the Hon'ble the Resident in Mysore. Informs him of the above.		3
9	No. Pol. 718, dated 31st January 1911, to the First Assistant to the Hon'ble the Resident in Mysore. States that the Bill was brought before the Legislative Council Meeting held on 15th August 1910 with a motion for leave to introduce it but that the Council rejected the motion; gives a summary of the reasons that led the Council to do so and states that on account of the decided opposition by the public against the Bill the Durbar consider that they would not be justified in proceeding with the matter further at present, and as regards the desirability of protecting the rights of the British Indian convert residing in Mysore, states that such cases of conflict of law are not likely to be of frequent occurrence in the future and that it is possible the Courts may find a way of avoiding a conflict when such cases do occur and that the Durbar feel therefore that for such an exceptional and almost imaginary case, no special legislation is at present needed.		3-6

X. 5, 8A and 8B not printed but made into a B. cdn July 1911.

Previous References to Legis. F. No. 28 of 1909-10, "A" Record.

1. Legis. 25 of 1904-05.
2. D. O. File No. 193 of 1908-09.
3. Opinions of Select members of the Legislative Council
4. D. O. correspondence of 1905.
5. One confidential cover.
6. Old Files (5) beginning from 1874.
7. Do *re* Succession Act of 1865.

1909-10.

GENERAL AND REVENUE SECRETARIAT

(LEGISLATION.)

NOTES.

FILE No. 28

Civil Disabilities of Christian Converts in Mysore.

1. From the First Assistant to the Resident in Mysore, No. 4936, dated 27th July 1909.

Serial No. 13.

States that in consequence of a recent case (decided by the Munsiff of Tumkur in 1907) the question of legislation to remove the disabilities of Christian converts has been revived; asks to be furnished with the record of the above case for transmission to the Secretary of State; enquires if a case similar to the above was ever brought before the Courts of the State during the days of the Commission; points out the desirability of legislation so as to make the law in Mysore more in accordance with principles of modern justice; and concludes by saying that in any case it is necessary that the "fundamental rights and liberties" of British subjects residing in Mysore should be ensured.

1. The printed collections put up give the history of this question from the time it was first started down to the year 1906. The literature is so full and the question has been discussed so thoroughly from various standpoints, that it is unnecessary to note at any length. A few points that stand out prominently are noted below for convenience of reference.

(1) The Residency has asked if a case similar to the Tumkur case of 1907 was ever brought before the Courts during the days of the Commission.

I have not been able to trace out any case in which the exact question involved in the Tumkur case (*viz.*, proprietary disabilities of converts) was ever raised prior to the Rendition. But the case of Hutchi in 1874 which raised the question of marital rights of a Hindu wife subsequently converted to Christianity, resulted in a thorough examination of the whole question including the proprietary disabilities of converts. The result of this enquiry is embodied in the printed collection put up.

It may be incidentally noted here that the absence of any case during the days of the Commission exactly similar to the present Tumkur case shows the extreme paucity of instances of hardship. Very likely even after Rendition, such cases are very few.

(2) Attention is invited to the D. O., dated 31st January 1909, of the late Dewan Mr. Madhava Rao to the First Assistant Resident.

(3) Travancore has proportionately the largest Christian population in the whole of India and yet the British Indian Act has not been introduced there, on the ground that it is inconsistent with the Joint Family System prevailing there ("The Tarawad").

(4) The "disabilities" under discussion are not anything imposed by the State on subjects not professing the State Religion. They are the result of a personal law which is given effect to as in British India—in certain matters, *e.g.*, marriage, inheritance, etc. It is inevitable that such laws should retain traces of their archaic origin which appear anomalous judged by modern conceptions of "Justice and Equity." Such anomalies are to be found in the Mahammadan law also as well as in departments of Hindu law other than the one now under discussion. And yet, the State does not even think of trying to remove those anomalies until public opinion is fully ripe for the change. In this case, even "informed" public opinion appears to be against it, and it is a question whether legislation so far ahead of public opinion may be undertaken.

(5) In case it is considered desirable to undertake legislation at all, then it may be confined to the removal of disabilities in respect of inheritance. Even here it is a question whether the right may not be confined to the convert himself. His descendants—possibly the offspring of a marriage out of the particular caste—can hardly be described as the heirs of the Hindu ancestors.

(6) Rights of guardianship of children may be left with the mother, irrespective of her religion (unless she is otherwise unfit) as it appears to be opposed to all considerations of natural justice to part her forcibly from her children.

(7) As regards British subjects residing in Mysore, there should be no difficulty in answering the query of the Residency. Their own personal law can be enforced even in Mysore by the application of the ordinary principles of Private International Law but if this is held not to be possible, provision may be made to that effect by means of legislation.

Circulated to Councillors as ordered by the Secretary.

S. HIRIYANNAIYA.
5-8-09.

2. Seen.

K. P. PUTTANNA CHETTY.
9-8-09.

3. Seen. I believe a reply to the Residency letter is due.

H. V. NANJUNDAYYA.
6-8-09.

4. As a reply is due to the Residency, I request the Councillors to be good enough to record their minutes.

T. ANANDA ROW.
14-10-09.

Second Councillor's Note on the Civil Disabilities of the Christian Converts in Mysore.

5. The provision in Section 17 of the Civil Courts Regulation applying the Hindu and Mahomedan Laws to certain matters of substantive law, lays down the rule followed not only in British India but in all civilised countries and in all systems of jurisprudence. It is unnecessary to say that it should not be lightly set aside.

6. The rule that is meant to be repealed by legislation is that of the Hindu Law that lays down that a "Patita" shall be incapable of inheriting property, and that of the Mahomedan Law imposing a similar disability on a non-believer. It is unnecessary to consider in detail the effect of the working of this rule in the Mahomedan Law as the same considerations apply in both cases. The effect of the rule is given in the appended extract from Mr. Amir Ali's work. The fact explains why the opposition to the proposed legislation comes from both the communities of the subjects of this State. It is enough to confine my remarks to the matter as affecting the rule of Hindu Law. The old text-books of Hindu Law do not say much about the general rights or disabilities of "out-castes." The statement in Mr. Justice Ramachendra Iyer's judgment, that "the Hindu Law makes him lose his civil rights" can hardly be supported in its generality. The matter is however only of an academical interest, for whatever the rules of Hindu Law may be they can be applied by the Courts only in matters affecting "succession, inheritance, marriage or caste or any religious usage or institution" as laid down in the Civil Courts Regulation, and in all other matters there can be no difference between one who has remained a Hindu and one who has become a convert to a different faith.

7. This rule of exclusion from certain rights was not made in any spirit of antagonism to any other religion. It goes without saying that conversion to Christianity or Mahomedanism could not possibly have been in contemplation. The definition of the term "Patita" is one that has given up the correct or proper duties, and taken to forbidden ways, that is, one who has given up the dharmas of his position and adopted others. At the time that this rule was adopted, the competition was not between the Hindu or Aryan religion and other religions which claimed to be of equal or superior rank, but between religion and no religion at all. Those who fell from Hindu religion could not range themselves along with the members of any recognised, organised community with rules and traditions and usuages of its own, but became the outcastes of society in every sense of the term, and were really "Patita" or fallen both morally and socially. Schismatics within the social pale were not apparently at any time regarded as "Patitas" within the purview of this rule; and if converts to Christianity and Mahomedanism were classed as out of the pale of caste, it was apparently as much the result of the exclusive claims of these two religions as of the character of the Hindu religion. The Roman Catholics, who did not obtrude their levelling tendencies so much as the Protestants, found that they could get on harmoniously with their neighbours, and with them conversion did not generally mean estrangement. In this connection I would draw attention to a remarkable letter of a Catholic Priest written in 1866 which is printed as paper marked B.

8. I cannot see any force in the view that the rule attaches a stigma to the Christian converts. That a certain stigma should come to attach to the term "Patita" (which literally means "fallen," that is, fallen from the faith, society or caste) is only to be expected and the process is seen in all nations and languages and religions. It is quite needless to cite examples. That the enlightened members of the Hindu community do not attach any stigma to the profession of Christianity or any other religion to which any one is born, is shown every day. But those who ostentatiously give up one religion and join another have to meet at the outset with certain feelings of antagonism from their former associates. This is not the creature of any rule of law, and cannot be removed by enactment. If the convert

is regarded as a renegade, he returns the compliment by stigmatising those who have not followed him as heathens; and there is not much to choose between the two states of mind.

9. It is a very important principle in politics and legislation that no changes should be made in the national laws of inheritance, unless any of them are manifestly barbarous, and work grievous injustice on individuals, which cannot in any other way be avoided or remedied. It is settled law now that property once vested, that is, what has become the proprerty of the man, cannot be taken away from him on account of his forsaking his religion or caste. Property rights and expectations may in this connection be viewed in three different classes, namely, the convert's exclusive property, interest in undivided joint property and expectation of intestate succession to the property left by others. About the first kind, there is no room for dispute at all. On the second head, it would introduce confusion if we import ideas and terms of the English law, without discriminating how far they are applicable to the contents of the Hindu Law on the subject. Vested rights in English Law are as good or almost as good as exclusive property, though not reduced to exclusive possession. There are many points of similarity, no doubt, between them and a Hindu's joint interest in family property; but there are vital differences also. It is laid down in Hindu Law that in lands and other property acquired by a grandfather, the father and son have equal ownership, but the rule is of course subject to the qualification, that "patitas" and their issue are not entitled to share in property (Niramsakas). As both the rules are to be read together, the joint interest is not properly speaking, vested at all in those who labour under the enumerated disabilities.

10 As for the expectations of succession in property (whether by direct descent or collaterally), there is no particular hardship in the loss sustained by a man who deliberately renders himself incapable of succeeding as heir according to the law applicable to the person who leaves the property. The latter may, notwithstanding the conversion, allow his natural affection to override his caste or religious ties. If so, he has the power to bequeath the property to his convert son or other relative; just as, if the law is altered as proposed, he would be able to disinherit him by will. Which of the alternatives should be adopted as the rule for intestate cases, would depend upon the consideration as to what may be presumed to be the intention of the defunct owner if he had chosen and had the opportunity to make a will. Taking the feelings and ideas of an average Hindu in the present state of society into consideration, there can be little doubt that the more valid presumption (in the absence of expressed intention) would be that the decedent owner wished the property to devolve on his heirs who remained within the pale of his caste and religion.

11. There is another way of viewing the matter. The rights of succession of the convert, and the rights of succession to the convert may fairly be regarded as reciprocal. If the Hindu Law denies certain rights to the convert, it equally negatives the rights of his unconverted relatives to his property if he dies before them. It has no doubt been decided in Madras (I. L. R. 9 Madras 466) that Hindu relatives may succeed to an intestate's property under the Indian Succession Act. But the Indian Succession Act has not been made applicable to the "Native" Christians of Mysore; and the Madras rule (even if sound law, which is open to some doubt) does not come into operation here.

12. Interest in joint family property is thus the only property right which has a *primâ facie* claim for consideration. If the question arises during the lifetime of the father, the right of the convert son to get partition from him is not entitled to as much consideration, as if the dispute arose only between brothers or other co-heirs. The equal interest of the father and son being a creature of the Hindu Law, the convert who has thrown the obligations of that law overboard has no right in equity to invoke its aid in his favour. As against other co-heirs or joint members, his claim stands on a somewhat higher footing, though even here, the right in property of the convert is qualified by the general rule that a "Patita" is incapable of taking a share.

13. Though not entitled to share according to the Hindu Law, it seems just that the convert's right to take away what was his share at the time of the conversion should be recognised. But the means of enforcing his right are ready in his own hands. He has only to enforce partition before he gives up his caste and religion. The hardship complained of is therefore only of the sentimental sort, and it is hardly worth while to disturb the frame-work of the indigenous law for the sake of redressing what is after all mainly an imaginary grievance. In fact, the learned member who represented the Indian Christians on the Committee objects to the proposed legislation as of little practical importance as it concedes nothing which the convert cannot at present obtain.

14. What then should be the reason for changing the law? The convert is always in a position to ensure that his "vested" rights shall not be lost by reason of his conversion. His expectations of inheritance are to be rightly governed by the presumed intentions of the decedent owners, and the law applicable to them; and if they have not made any will in his favour, it is the most valid presumption that they wished to leave it to the heirs under the

law to which they were subject. The real hardship occurs in the case only of converts who are unable by reason of their tender age to see how their rights would be prejudicially affected by their neglecting to file suits for partition before their succession. But in their case, the conversion itself would be a grievous wrong and will be hardly approved of by right-minded persons.

15. I have not advisedly said anything about rights of marriage and guardianship. The former group of rights and obligations is settled both by legislation and judicial decisions in a fairly satisfactory manner. About the latter, though I agree that a father attaches much more importance to his children than to his chattels, I am of opinion that the greatest consideration is due to the rights and interests of the child, and that the duties of the father are more important than his so-called rights. The difference between the Hindu and other religions is that when once caste (and social status) is lost, it can hardly be regained; and so it is in accordance with justice, equity and good conscience that the father's right cannot be allowed to operate in such a manner as to make the minor son an outcaste. The matter is well brought out in the able judgment of Mr. Justice (Sir) Krishna Murty in Dasappa's case. (NOTE.—See also Chapter V of Pamphlet by Tripathi.)

16. It is easy enough to advance sentimental grounds for changing the law, and not very difficult to meet them or expose their fallacies. There are very few cases of property dispute between converts and their non-converted relatives, for the simple reason that converts are mostly drawn from the poorer classes of the State. The very fact that the agitation is all to advance their claims to succession and that nothing is said about succession to what they may leave shows that they are not apprehensive of any unfair want of reciprocity. It seems therefore quite unnecessary to create any feelings of antagonism between different sects by this interference with the well-established laws of inheritance.

17. There is, however, much force in the observation made in the Residency letter of the 10th April that such legislation would come as a graceful act from a Hindu sovereign, as the spontaneous effect to remove disunion among his subjects. But the trend of public opinion clearly shows that this will create and foment discord between the two religions, and cause discontent to the vast majority, while only partially satisfying the small minority sought to be benefited. If, on the other hand, the matter is left alone, it is most likely that in course of time, natural feelings will be regarded as entitled to more consideration than changes of religions. It would then be easy enough for a father, whose affection for his son is stronger than his love for caste or religion, to dispose of his property in such a manner as to benefit a convert child, in spite of the law disinheriting him. As a rule, at present, a son who turns Christian or a Mussalman against the wishes of the father, shows that he has not the slightest regard for the feelings of that father. His behaviour is not in the eyes of the father less unnatural than that of the latter if he chooses to allow the law disinheriting, the son to take effect as a matter of course. In the disposal of the property left by a man his wishes and feelings are entitled to more consideration than the expectations (for *ex hypothesi*, he has no right) of a son or other heir who flouted them and deliberately cut himself adrift.

18. As shown by various persons in the papers in this file, a great many things that were considered heterodox have been accepted as allowable for persons within the pale of caste. With mutual concessions and growing respect for each other it is by no means unlikely, that Hindus as a class may become more tolerant of radical changes in faith. This will be shown by less and less of opposition to such changes of law and by a growing usage of mitigating the rigour of the law by means of testamentary dispositions. That will be the proper time to alter the law by legislation if it is found that judge-made law has lagged behind the general sentiment of the community.

19. It remains to notice only one more point. In the Residency letter of 7th July 1909, it is stated that "it would be necessary, in any case, to ensure that the fundamental rights and liberties of British subjects residing in the Mysore State are not exposed to forfeiture, while living in Mysore, on the ground that they held religious veiws professed by other citizens, but not the views, which their Hindu fathers held." In the absence of any express rules on the matter, questions involving such rights and liberties will have to be disposed of, when they arise, in accordance with the established rules of Private International Law. As far as I can see, succession to property, etc., will be governed by the law of the forum to whose jurisdiction the property is subject. This would in all cases supply a just and impartial rule of conduct. But if it is shown that the rules applicable are inadequate or inequitable, we may bring about such changes as the British Government may advise to be necessary to safeguard the rights of British subjects who may happen to come within our jurisdiction.

20. Thus it can hardly be urged with any plausibility that the legislation is necessary, either as an abstract measure of justice, or to obviate actual hardship in an appreciable number of cases. No doubt this Government, in common with the supreme Government of

India, is pledged to treat all religious differences equally and impartially. The existing rule of law does not by name condemn Christians or Mussalmans to any penalty or forfeiture. It merely says that persons who cut themselves adrift from the Hindu society and decline to be bound by its code or to remain within its pale, shall be subject to certain consequences. Every man is free to do whatever he likes with his property and rights within recognised limits. If he declines to take his share or to accept a legacy or to take property as an heir, the law does not step in to save him in spite of himself. Nor does it, in ordinary cases, save him from the effects of any forfeiture deliberately incurred. Why then should it do so in this case? An alteration of law as now proposed would not help the comparatively large number of persons who are already Christians. It has been seen by experience that new converts are generally from the poorer classes, and that not even once in ten years does conversion take place of an individual who can hope to obtain a share of any patrimony. I do not personally know, in all my experience in the State, of a single case in which the existence of this rule has deprived any convert of any property. The rule applies as much to converts to Mahomedanism as to those going to Christianity. If the former do not care to agitate for a change and do not feel any humiliation on account of the existence of such a rule, why should the latter make a fuss over a virtually sentimental grievance, and agitate for a change of law which is applicable not to themselves but to the Hindus? If such a law is passed, it would be difficult to show that it is not meant as a direct help and incentive to conversions from Hinduism. With great deference, I beg to question whether the supreme Legislature would consider it right to pass such an Act as XXI of 1850 at the present day, and whether a Native Ruler (Hindu or Mahomedan) may, in the teeth of such widespread opposition, fairly be expected or called upon to bring about an alteration of such doubtful justice and expediency in the law of inheritance governing the vast majority of his subjects.

I. V. NANJUNDAYYA.
26-10-09.

21. It is perhaps not necessary for me to record my present opinion at this stage, more especially as the Draft Regulation is intended to be placed before the Legislative Council.

22. Whatever may be said about the general question of the removal of the civil disabilities of Native Christian converts in the Mysore State, there is not much room for a difference of opinion on the question raised at the end of the Residency letter of 27th July 1909, *viz.*, the necessity to safeguard the "fundamental rights and liberties of British subjects residing in the Mysore State." My learned colleague Mr. Nanjundayya makes out that according to the rules of Private International Law, succession to property, etc., in such cases will be governed by the law of the forum to whose jurisdiction the property is subject. This means that a British Indian subject who is a convert, while living in Mysore, forfeits his rights as a British Indian subject which are inherent in him by virtue of Act XXI of 1850, by reason of his being a convert, a consideration which imposes no disability on him in British India. The mere fact of the residing in the Mysore State ought not to curtail his rights and liberties as a British subject. It is bare justice to allow him to enjoy such rights as are specially guaranteed to him in British India, why should he not carry his 'personal law' with him? Even under the Hindu law, a Mithakshara Hindu, though living in Bengal, is governed by Mithakshara and not by Dayabhaga (the law of the land). Such being the case, cannot the same principle be held applicable to a British Indian Christian subject residing in Mysore? I hardly think that this small instalment of justice can be denied to the Indian Christian subjects of His Majesty the King-Emperor.

23. If the law is as interpreted by the Second Councillor, I think a resort to legislation would be quite proper both in the interests of justice and fair play and a sound policy.

K. P. PUTTANNA CHETTY,
30-1-10.

D. O. No. F. 648, dated 30th January 1910, from Mr. S. M. Fraser, Resident in Mysore, to the Dewan Mr. T. Ananda Row.

24. The article in to-day's "Madras Mail" reminds me that I have not yet received from the Durbar a reply about the *ad interim* action to be taken in the matter of Christian Disabilities.

D. O. No. 661, dated 31st January 1910, from the Dewan to the Private Secretary to H. H. the Maharaja, Mr. R. H. Campbell.

25. As you will observe from the annexed D. O. received from the Hon'ble the Resident yesterday when he was on a flying visit to Mysore, there is pressure for a formal answer to the Residency letter of 27th July 1909 *re* Native Christian Disabilities in Mysore.

(2) The answer has been delayed owing to the non-receipt of minutes of Councillors on the "British Subjects" branch of the question. These came to hand only this morning; and as you will observe from pages 20 and 25 of the notes on the file, the two Councillors are not quite in agreement.

(3) Annexed to this is the draft of a non-committal reply which, if approved by His Highness, may issue for the disposal of the pending reference.

(4) To save you the trouble of handling a bulky file I send herewith only the Residency letter awaiting answer and the office notes and Council minutes.

D. O. No. F. 649, dated 2nd February 1910.

My Dear Sir,

26. I return the draft letter to the Residency *re* Native Christian Disabilities. His Highness approves of the draft with one or two modifications which I have inserted.

Yours sincerely,
R. H. CAMPBELL.

T. ANANDA ROW, Esq., B.A.,
Dewan of Mysore.

27. Please issue to-day the draft approved by the Dewan.

C. S. BALASUNDARAM IYER.
4-2-10.

28. Issued. May this be circulated to Councillors?

S. N. Yes.

5-2-10.

29. Submitted to Councillors for information.

S. HIRIYANNAIYA.
5-2-10.

30. Seen.

H. V. NANJUNDAYYA.
7-2-10.

K. P. PUTTANNA CHETTY.
8-2-10.

31. The Dewan directed me personally to take further steps in view to placing the draft bill of 1905 before the Legislative Council. A draft D. O. to the Resident is accordingly put up intimating the fact.

32. Mr. Narayana Rao, Government Advocate, will be asked to take charge of the Bill.

As directed by the Dewan.

33. Draft may be approved.

S. HIRIYANNAIYA,
10-2-10.

34. I had not had the full file before me when I wrote the above. Looking at the previous papers, it is seen that the draft Bill of 1905 does not contain a statement of objects and reasons (as it had to be published in a hurry). I have put up one* now which may be approved. I have said that the "Government propose to place the Bill 'published in 1905" before the Mysore Legislative Council for *consideration*. The words underlined seem to be necessary in view of the non-committal attitude of the Government.

Attention is invited to the passage in Dewan's address to the D. R. A. 1909.

35. The Hon'ble the Resident invites us, in the concluding portion of his D. O. of 10th April 1909, to make a formal declaration in the statement of objects and reasons about the policy of His Highness' Government in undertaking this legislation, *viz.*, "to remove one cause of disunion among Indians, which constitutes the chief and ultimate bar to the realisation of Indian ideals." I have not included this in the statement as there are no specific orders.

36. In the Bill itself, two small changes appear to be necessary.

(1) In the preamble the words "is called" in the first line on para 2 may be changed into the more usual and appropriate form "may be called."

This alteration may be made.
C. S. B.

(2) Illustration (*c*) of clause 3 of the Bill seems to be founded on a legally impossible supposition. A cannot marry another wife even after becoming a Mussalman so long as his first marriage with the Christian wife is not dissolved (by divorce or by her death). The reason is that his monogamous obligations towards his Christian wife cannot be shaken off by him by becoming a

A will no doubt commit bigamy by such an act but such cases are likely to arise and the illustration may perhaps remain and need not be interfered with at this stage.
C. S. B.

Mussalman (please see p. 829, Nelson's Penal Code). The illustration presupposes the legal validity of such an act on the part of A and may, therefore I think, be omitted with advantage.

37. If these suggestions are approved slight changes will be made in the drafts put up and in the copy of the Bill to be forwarded to the Resident.

S. HIRIYANNAIYA.
14-2-10.

38. Draft Bill with statement of objects and reasons is submitted to Dewan through 2nd Councillor.

C. S. BALASUNDARAM IYER.

I. V. NANJUNDAYYA.
15-2-10

39. Please see Dewan's order on the draft letter to the Residency. He directed that steps may be taken to place the Bill before the Legislative Council.

B. RAMASWAMAIYA.
18-2-1

40. Assistant Secretary, III.

Please take Dewan's orders as to who should be in charge of the Bill. It may perhaps be published without formal leave to introduce being taken. Please take Dewan's order about this also.

C. S. BALASUNDARAM IYER.
21-2-10.

41. The Dewan told me personally that (1) the Bill is to be entrusted to Mr. Narayan Rao (*vide* para 32) and that as there is no hurry, the usual procedure (of taking leave) may be followed for inclusion in the agenda of the next meeting.

S. HIRIYANNAIYA.
21-2-10.

2. To the First Assistant Resident in Mysore, No. Pol. 648, dated 4th February 1910.

Forwards printed spare copies of the record in the Tumkur case; states that the measure will be dealt with in the Legislative Council and the result communicated to the Residency in due course and that the question of protecting the rights of British Indian converts residing in Mysore will be discussed after the result of the deliberation of the Bill, in the Legislative Council is known.

3. From the same, No. 889, dated 12th February 1910.

States that the further communication promised in the above will be awaited, and requests to be furnished, as already desired, with particulars of any case similar to the Tumkur case, which occurred during the administration of the State by the British Government.

Secretary's remarks, dated 10th February 1910:—

42. To Assistant Secretary, Branch III, for needful. It would perhaps be useful to compile a collection of cases under the British Indian Act in addition to the cases in Mysore.

C. S. BALASUNDARAM IYER.

43. Submitted. A collection of cases under the Indian Act is being made.

44. As regards cases, if any, which have arisen in Mysore corresponding to the Tumkur case during the days of the British Commission, it is to be stated that the reports of cases decided in the State date only from the year 1876 and the reports between that year and 1881, do not show any such case. As will be seen from the printed compilation of papers on the subject of removal of disabilities of Native Christian converts no cases of claims on the part of such converts either in regard to the right of property or any other kind of right had come to notice till 1873, and as is already known this compilation gives the history of the subject after this period. Mention is however made in the last page of the collection, of a case which occurred in Mysore in which there was some real hardship. But this does not show when the case arose. The letter of the Deputy Commissioner wherein the facts of the case are said to have been explained is not forthcoming in the file of papers now put up and may perhaps be found in the D. O. collection if any preserved separately. If not, the Deputy Commissioner will have to be applied for in regard to this. It does not seem to be possible to find out cases of the kind in question from the records of this office. The Chief Court may

perhaps be accordingly requested to furnish Government with information on the point either from its own records or from the records of its subordinate courts. Submitted with a draft for approval or for other orders.

T. K. S.

25-2-10.

S. N.

25-2-10.

45. To the Council Section to kindly state if there are any papers relating to the case mentioned in the last page of the printed collection.

S. HIRIYANNAIYA.

25-2-10.

Submitted to Assistant Secretary.

46. Confidential collection No. 98 bearing on the subject has already been put up with the main file. There are no other papers in the confidential almirah

T. V. T.

26-2-10.

47. (1) Issue the draft to the Chief Court.

(2) Cannot the Deputy Commissioner of Mysore supply information about the representation of the Roman Catholic Bishop referred to in the last page of the printed collection?

S. HIRIYANNAIYA.

26-2-10.

48. Submitted with a draft to Deputy Commissioner, Mysore.

S. V. S.

4-3-10.

S. N.

4-3-10.

49. Issue.

N. RAMA RAO.

7-3-10.

4. To the Registrar of the Chief Court No. J. 2523, dated 26th February 1910.

Requests him to furnish Government with particulars of cases, if any, similar to the Tumkur case which occurred in any of the Courts during the administration of the State by the British Commission.

5. To the Deputy Commissioner, Mysore, No. J. 2643, dated 8th March 1910.

Requests him to forward a copy of the letter forwarded by him in 1901 explaining the circumstances under which a real case of hardship arising out of conversion to Christianity is said to have been reported in Mysore.

50. As desired by the Assistant Secretary, draft of a D. O. to Mr. S. Narayana Rao, Government Advocate, forwarding the file and requesting him to take the necessary action with a view to the introduction of the Bill by him before the Legislative Council, is submitted for approval.

51. Issue draft.

S. HIRIYANNAIYA.

12-3-10.

52. The file has been returned and the following letter from the Deputy Commissioner, Mysore, has also been received.

6. From the Deputy Commissioner, Mysore, No. 669, dated 17th March 1910.

Forwards the draft of a D. O. addressed by him to Government in 1901 and referred to in the printed collection.

53. The communication refers only to cases of compensation payable to certain Native Christian converts in the Mysore City which arose in 1901, perhaps in connection with the schemes of the Mysore City Improvement Trust Board, and hence do not seem to be relevant to the information called for by the Residency, as they want particular cases which occurred during the Commission days. Perhaps the information called for from the Chief Court may be awaited.

54. Submitted with a collection of cases decided in British India under Act XXI of 1805

T. K.S.
24-3-10.

S. N.
24-3-10.

55. Await receipt of information from the Chief Court.

S. HIRIYANNAIYA.
28-3-10.

7. From the Registrar of the Chief Court of Mysore, No. 4616-271, dated 25th April 1910.

States that no case similar to that decided by the Munsiff of Tumkur in O. S. No. 1016 of 1906-07 has been filed either in the Chief Court or in the Court of the Judicial or Commissioner or in any of the subordinate Courts.

56. The Residency has to be informed of this. Submitted with a draft for approval or for other orders.

T. K. S.
28-4-10.

S. N.
28-4-10.

57. Draft may be approved.

S. HIRIYANNAIYA.
29-4-10.

58. The draft may be approved.

(The Chief Court came into existence only after the Rendition.)

C. S. BALASUNDARAM IYER.
30-4-10.

H. V. NANJUNDAYYA.
30-4-10.

8. No. Pol. 972, dated 18th May 1910, to the First Asst. to the Hon'ble the Resident.

Informs him of the above (*vide* serial 7).

66. The Legislative Council to which the Bill for the removal of disabilities arising from change of religion or deprivation of caste and prepared in 1905 was referred, has refused to consider the measure, even to grant leave for the measure being placed before that body for consideration. A reply has now to be sent to the Residency. Submitted for orders with a copy of abstract proceedings of the last meeting of the Council.

T. K. S.
29-8-10.

S. N.
29-8-10.

67. (1) I have put up a draft to the Residency, adopting the important arguments urged against the measure.

68. (2) Regarding the applicability of the Mysore Law to converts in Mysore with a British Indian domicile, the law of succession applicable to them is the law of the country where the property is situate (*Lex situs*) in the case of immovables and the law of the country of domicile in the case of movables. The latter obviously calls for no remarks. In the former case, the Mysore law will have to be applied to the converts in question but as there is no law in Mysore of general territorial application in matters of succession, etc., which can be called the "law of Mysore," the Courts will have to apply the law of domicile in this case also, that is, the law applicable to the convert in British India.

Extracts from the proceedings of the Dasara Representative Assembly of 1906 and 1909 are proposed to be sent with the draft.

Attention is also invited to page 109 of the "Harvest Field" (for March 1910), a missionary magazine.

S. HIRIYANNAIYA.
14-9-10.

69. A draft letter to the Residency is put up. I beg to invite the 2nd Councillor's attention to para 14 of the draft regarding British Indian Converts in Mysore.

C. S. BALASUNDARAM IYER.
10-12-10.

70. I have made certain alterations in pencil, chiefly to remove redundant passages.

71. The view that the law of domicile of a foreigner would be applied even in cases of succession to immovables cannot be correct. It is not true to say that there is no territorial law in Mysore. It is Hindu Law to a Hindu and Mahomedan Law to a Mahomedan, etc., and the Hindu Law is what is in force here as such that will have to be applied.

72. The last para is not sufficient. Please enlarge it in the light of remarks contained in my speech and elsewhere. I believe the Residency has nowhere conceded that it would be sufficient if we provided only for property rights.

H. V. NANJUNDAYYA.
20-12-1910.

73. Submitted to Dewan as finally approved by 2nd Councillor.

S. HIRIYANNAIYA.
3-1-1911.

* * * * * * *

74. To me this seems to be all right. I have no suggestions to make. Please show to 1st Councillor also for suggestions if any. Then let it be re-typed with half margin and sent to me for submission for His Highness' approval.

T. ANANDA ROW.
5-1-1911.

75. With reference to the Dewan's note of yesterday, I beg to state as follows:—

It seems to me that the draft goes into reasons too fully. The question has been under agitation since the year 1894,* and Sir K. Seshadri Iyer had made a sort of promise to legislate in the matter. Sir P. N. Krishnamurti, too, was in favor of such a course. A Committee was appointed in 1905, which recommended the removal of some of the disabilities by means of legislation. A Bill was drafted but no further action was taken. In the meantime a Legislative Council was created for Mysore and the Bill had necessarily to be placed before it. The attitude of His Highness the Maharaja's Government should be one of neutrality and not inconsistent with the past history of the case. It is unnecessary and inexpedient for the Government to range itself on the one side or the other and espouse any particular side. The reasons *per contra* are fully given in the discussions which have taken place in the Council. In my opinion it is sufficient to refer to them in a general way instead of making them appear as the views of Government. The reasons given in the draft letter are a reiteration of those urged by the opponents of the measure, and they should not go forth as the opinion of His Highness the Maharaja and his Government. We are not averse to legislate if we can carry reasonable public opinion with us. This should be our attitude.

* Page 11 of the Proceedings of the Legislative Council and page 26 of the printed collection.

K. P. PUTTANNA CHETTY.

6-1-1911.

Submitted to His Highness.

76. I submit herewith two alternative drafts of a reply to the Residency on the subject of legislation for the removal of the disabilities of Christian converts.

2. The draft marked "A" goes into a discussion of the merits of the question and has been approved by the 2nd Councillor. The 1st Councillor in his minute, dated the 6th instant, has urged the desirability of sending a non-committal reply. There is much force in what he has written, and endeavour is made to adopt this idea in draft "B."

3. We have been receiving repeated D. O. reminders from the Residency for the Durbar's reply in this matter.

T. ANANDA ROW.
9-1-1911.

Draft A.—To the First Assistant Resident to the Hon'ble the Resident in Mysore.

1. I am directed to refer to the correspondence ending with my letter Pol. No. 648, dated 4th Eebruary 1910 on the subject of the disabilities of Christian converts in Mysore and to state as follows:—

2. As observed in para 3 of that letter, the Bill prepared in 1905 by Mr. Staley's Committee was placed before the Legislative Council at the meeting held on the 15th August 1910 on a motion for leave to introduce the Bill, but the Council after considerable discussion felt that there was no chance of such a law becoming acceptable even after further consideration, and rejected the motion. I am to enclose herewith a copy of the report of the Proceedings for information. In the circumstances, the Durbar feel that they would not be justified in proceeding with the measure further.

3. As desired in para 5 of Mr. Copeland's letter No. 4936, dated the 27th July 1909, I am directed to state the following reasons that have weighed with the Durbar in arriving at this decision.

4. The intimate connection between religion and social and legal relations has not become obsolete in this country; and influence of caste, which has even affected Christians and Musalmans, is all but paramount.

5. A change of religion on the part of a Hindu necessarily involves a definite loss of caste and a complete severance of all his former social ties and relationships. His wife will no longer consort with him, his parents and his children will no longer live with him. None of his relations or friends of the same caste will even dine with him or take water from his hands. If his children follow him into the new faith, they can never marry persons of their prior social circle. The convert thus becomes for all practical social purposes an utter alien to his family, friends and social circle; and this obtains not alone in the so-called superior twice-born castes but in every caste whether high or low.

6. It is this close association between religion and social life that compels the Hindu to look at the Bill in question from a point of view entirely different from that of an outsider who may consider the matter from an abstract standpoint. In Hindu Law, the inheritance of property is intimately connected with the performance by the heir, of the obsequies of the deceased owner. Whatever may be the criterion for determining the order of succession according to the Hindu Law as in force in Mysore, whether it is the principle of "Consanguinity" or the principle of "Religious efficacy," it is admitted on all sides that inheritance and the performance of spiritual rites are very closely associated with each other. It is therefore impossible to alter the Hindu Law of succession without at the same time affecting the Hindu religious and social system on which it is based. In the view of a Hindu, to grant the rights of inheritance and succession to a person who has given up the Hindu religion and his caste and has thereby rendered himself incapable of performing the ceremonial duties due to his deceased ancestors and cut himself off from the society in which he was born, would be to allow him the enjoyment of the privileges of a Hindu under the Hindu Law while releasing him from the obligations incidental to such privileges.

7. Regarding the disabilities themselves, it has been sometimes stated by the advocates of the convert that his position is analogous to that of an "outlaw." It needs very little consideration to show that this is a gross exaggeration. It is needless to point out that in Mysore, as elsewhere, a convert to Christianity enjoys as much protection to his personal property as any of his fellow-citizens professing a different religion. As a Christian, he is not prevented from acquiring, holding, or disposing of property of any description, from pursuing any calling or holding any public office. It is only in certain matters of inheritance, succession, adoption, marriage and guardianship affecting a Hindu or a Musalman, as such, which are allowed as in British India to be regulated by the laws peculiar to each community, that the convert is debarred from exercising certain rights peculiar to the status which he has abandoned by his conversion and affecting others who remain Hindus or Musalmans as the case may be.

8. The few disabilities of the convert arise not out of any enactment passed by the Government of this State, but as a consequence of allowing each community to be governed by laws peculiar to itself in certain matters. Even under the existing Hindu Law, the position of the convert in respect of these matters is not in reality so bad as is sometimes represented. So far as ancestral or joint property is concerned, the convert can effectually secure his share therein by exercising, prior to his conversion, his undeniable right to enforce a partition of the family property. His own self-acquisitions he can always take with him. It is only the right of inheritance strictly so called, that is, the right of succeeding to property left by a decedent owner, that the Hindu Law does not concede to the convert. Rules of intestate succession are in all systems of jurisprudence based on a view of the decedent owner's natural inclinations as to the devolution of his property, presumed from the known usages, ideas and even prejudices of the society of which he was a member. Taking the present state of Indian society into consideration, it would seem to be a more valid presumption that a Hindu owner would not of his choice leave property to a son or other relative who has forsaken his caste and religion. In exceptional cases, a father or other owner would have the power of setting aside the general rule of exclusion by means of a will, just as if the proposed law were passed he would be able to exclude its operation in a similar manner.

The disabilities suffered by the converts to Christianity, such as they are, are not peculiar to them and could not have been specifically aimed at them, as at the time these laws were instituted, Christianity was unknown in India. The Hindu Law disqualifies from inheritance certain other classes of persons besides converts, namely, "eunuchs, persons born blind or deaf, the dumb, lunatics, idiots and persons afflicted with incurable diseases, such as leprosy in its worst form." Judged by a strict standard of reason, the class of persons just

alluded to are entitled to greater sympathy and consideration than even the converts, for the latter deliberately take a step which they know would entail a forfeiture of certain rights. Enlightened Hindus themselves feel that the exclusion of persons afflicted with natural infirmity from inheritance is inconsistent with modern notions of justice, equity and good concience. Nevertheless, there has been no agitation for an amendment of the Law in favour of this unfortunate class of persons, for the simple reason that any attempt in this direction is bound logically to result in a reconstruction, in the light of modern notions, of the whole structure of Hindu Law. Such an interference by the State with the laws of inheritance applicable to a large community would now hardly be defensible, unless those laws were manifestly barbarous or worked grievous injustice absolutely without remedy. Similar considerations shew that it would be extremely undesirable to interfere with the rules applicable to rights and duties of guardianship and that in fact it is much more inexpedient to attempt any alteration. The rights and interests of a minor child are much more important than the powers or supposed rights of a guardian, and as social and caste status once lost cannot be regained among Hindus, it is very important that the supposed rights of a convert parent should be enforced in such a way as not to prejudice the minor's permanent interests. This reservation had all along been made by almost all those officers and others who recommended a change of the law in respect of property.

9. These considerations explain, if they do not altogether justify, the attitude of hostility assumed by the Hindu population of the State towards any attempt to amend the law in the manner asked for by the converts.

Neither is the opposition to the measure confined to the Hindus only. The Mahomedans of this State are equally opposed to any legislation on the subject and this is significant in view of the fact that conversion to Islam from Hinduism is not uncommon in Mysore any more than it is in British India.

10. Instances of hardship, consequent on the existence of the provisions of Hindu Law complained against, are very rare as conversion to Christianity from among the property-owning classes seldom occurs. So far there have been only two reported cases in Mysore in which converts to Christianity suffered any loss on account of their conversion. One of them occurred in 1894 and the other 13 years later, namely, in 1907. This extreme paucity of cases of hardship renders it difficult to meet the argument on the other side that legislation in favour of the convert is indefensible in face of so much opposition from the great majority of the people of this State.

11. Throughout the period of nearly half a century during which the State was under the British Commission, the provisions of Hindu Law now complained against were allowed to be administered without a change and in connection with the only reported case of hardship that occurred during that period, namely, the case of Hutchi, in 1873. the Government of India who were approached on the subject of introducing legislation on the lines of the British Indian Act of 1850 refused on four occasions and once with the concurrence of the Secretary of State to accept the responsibility of sanctioning the proposal when administering the State on behalf of the Maharaja. The Durbar, now acting on their own responsibility, feel that though the specific ground on which the Government of India graciously rested their decision cannot be urged by them, the objections to the measure on the merits have apparently lost none of their force and that it is probably on such considerations that the Government of India have felt themselves unable to advise the introduction of any change into the similar provisions of the Hindu Law which are in force in the Native States of Travancore and Cochin.

12. As regards the strength and genuineness of the opposition to the measure, it is sufficient to state that petitions signed by about 34,000 individuals (Mahomedans and Hindus) have been received against it as against petitions signed by 2,078 persons (of whom only one was a non-Christian) in its favour, that the opinion of the Representative Assembly taken on two different occasions (*vide* extracts appended), namely, in 1906 and 1909, was emphatically against it and that in the Legislative Council a majority of the members refused even to grant the leave asked for for the introduction of the Bill.

13. In the face of such strong indications of public opinion hostile to the measure, the fact that only very few cases have come before the Courts during a long series of years and the circumstance that other Native States have not found it desirable to adopt any similar legislation, the Durbar feel that they will hardly be justified in pursuing the matter further at present. In these circumstances, they can only hope that with the spread of enlightenment, and the operation of the liberalizing influences of modern culture, the social barriers between different castes and religions will be removed and the opposition to the measure will gradually die out and that public opinion will one day welcome instead of opposing the grant of equal rights in matters of inheritance to converts from the Hindu and Mahomedan religions.

14. Turning now to the question of the applicability of the provisions of Hindu Law now under discussion to British subjects resident in the State, I am to state that so far no instance has occurred of a convert with a British Indian domicile having come by virtue of his residence in Mysore or otherwise under the operation of the Mysore Law, a circumstance which may be taken as indicating that such instances are not likely to be of frequent occurrence in the future. Any legislation undertaken with the object of providing a law for such cases would, in the opinion of the Durbar, be justly open to the objection that there is no practical necessity for it.

15. It would indeed be difficult to determine in what manner exactly any case of conflict would present themselves in future. If they occur, the Durbar are advised that the result would not be very different from what it would be in British India, as the principles of Private International Law would govern such cases. It is perhaps only in relation to immoveable property that the Local Law may have to be applied so as to bring about a different result from that in British territory; but even this is doubtful and it is possible that the Courts may find a way of avoiding the conflict. The Durbar feel that for such an exceptional and almost imaginary case, no special legislation is at present needed.

No. Political 718, dated 31st January 1911, to the First Assistant to the Hon'ble the Resident in Mysore.

I am directed to refer to the correspondence ending with my letter Pol. No. 648, dated 4th February 1910, on the subject of the disabilities of Christian converts in Mysore and to state as follows:—

2. In accordance with the intention expressed in para 3 of that letter, the bill prepared in 1905 by Mr. Staley's Committee was brought before the Legislative Council at its meeting held on the 15th August 1910 with a motion for leave to introduce the bill, and with the intimation that it was not a Government measure in the sense in which that term is ordinarily understood and that official members were at liberty to vote on the motion according to their independent judgment. As will be seen from the enclosed copy of the report of the proceedings, the Council, after a lengthy discussion, rejected the motion.

3. The attitude of His Highness' Government at present in regard to this matter, I am to explain, is one of strict neutrality. It may be that the proposed legislation, if given effect to, may not result in any harm, as none has resulted in British India from the passing of Act XXI of 1850. But His Highness' Government cannot shut their eyes to the fact that there is very strong and deep-rooted objection on the part of the public to the proposed legislation. This has become manifest ever since the publication of the draft Regulation in 1905, and it is a significant fact that the opposition to the measure is shared by the Mahomedan, equally with the Hindu, population of the State. As regards the strength and genuineness of this opposition, it is sufficient to state that petitions signed by about 34,000 individuals (Hindus and Mahomedans) have been received against the measure, while the number of signatories to petitions in favour of it was only 2,078 (of whom only one was a non-Christian), that the opinion of the Mysore Representative Assembly taken on two different occasions (*vide* extracts appended), namely in 1906 and in 1909, was emphatically against the measure, and lastly that the Legislative Council refused even to grant leave for the introduction of the Bill.

4. The grounds of this opposition on the part of the public may be briefly stated to be as follows: A change of religion on the part of a Hindu necessarily involves a definite loss of caste and a complete severance of all his former social ties and relationships. His wife will no longer consort with him, his parents and his children will no longer live with him. None of his relations or friends of the same caste will even dine with him or take water at his hands. If his children follow him into the new faith they can never marry persons of their prior social circle. The convert thus becomes for all practical social purposes an utter alien to his family, friends and social circle; and this obtains not alone in the so-called superior twice-born castes but in every caste whether high or a low.

The close association above described between religion and social life prevents the Hindu from looking at the Bill from the purely abstract standpoint. In Hindu Law the inheritance of property is intimately connected with the performance by the heir of the obsequies of the deceased owner. Whatever may be the criterion for determining the order of succession according to the Hindu Law as in force in Mysore whether it is the principle of "Consanguinity" or the principle of "Religious efficacy" it is admitted on all sides that inheritance and the performance of spiritual rites are very closely associated with each other. It is therefore impossible to alter the Hindu Law of succession without at the same time affecting the Hindu religious and social system on which that law is based. In the view of a Hindu, to grant

the rights of inheritance and succession to a person who has given up the Hindu religion and his caste and has thereby rendered himself incapable of performing the ceremonial duties due to his deceased ancestors and cut himself off from the society in which he was born, would be to allow him the enjoyment of the privileges of a Hindu under the Hindu Law while releasing him from the obligations incidental to such privileges.

5. It is doubtless true that much of this opposition is due to nothing more than sentiment; but it is equally true that many of the arguments in support of the proposed legislation are also based only on sentiment. In Mysore as elsewhere a convert to Christianity enjoys as much protection to his personal property as any of his fellow-citizens professing a different religion. As a Christian he is not prevented from acquiring, holding, or disposing of property of any description, from pursuing any calling or holding any public office. It is only in certain matters of inheritance, succession, adoption, marriage and guardianship affecting a Hindu or a Musalman, as such, which are allowed as in British India to be regulated by the laws peculiar to each community, that the convert is debarred from exercising certain rights which are peculiar to the status which he has abandoned by his conversion and which affect others who remain Hindus or Musalmans, as the case may be. Even under the existing Hindu Law, the position of the convert in respect of these matters is not in reality so bad as is sometimes represented. So far as ancestral or joint property is concerned, the convert can effectually secure his share therein by exercising prior to his conversion, his undeniable right to enforce a partition of the family property. His own self-acquisitions he can always take with him. It is only the right of inheritance strictly so called, that is, the right of succeeding to property left by a decedent owner, that the Hindu Law does not concede to the convert.

6. Owing obviously to the extremely small number of cases in which the existing state of the law is felt as a hardship, the agitation in favor of legislation was dying out, but has again been revived by the judgment of the Munsiff's Court of Tumkur in the case referred to in para 4 of your office letter No. 4936, dated the 27th July 1909. This judgment brought out in a striking manner the contrast that exists between the position of a convert and that of a felon; but if the case had been taken in appeal, it is not impossible that the appellate Court would have held that a murderer (and that too one who murdered a member of the family) was a "patita" (one who has fallen) and therefore liable to exclusion from inheritance. Unfortunately there was no appeal and there was one very peculiar feature about the case which might well have alienated the sympathies of friends interested in the subject. The fact was that the first and third plaintiffs, who are now held up as victims to an unjust law, brought the suit in the guise of Hindus. They denied on oath that they were Christians and Missionary witnesses had actually to be called on the other side to prove that they were baptised Christians. A great deal has been made of the fact that the only successful plaintiff was a Hindu felon and it is only fair to dwell on this other aspect, which deprives the two Christian plaintiffs of all moral claim to sympathy. It is not too much to say that they got only what they deserved and that the less said about the case as one of individual hardship the better.

7. With reference to the surmise expressed in para 5 of your office letter of the 27th July 1909 referred to above that during the period of the administration of the State by the Government of India, the principles of British justice which were expressed in Act XXI of 1850 may have "sufficed to prevent litigation for depriving a parent of his natural rights over his children or a proprietor of the control of his own property in the case of any Hindu who might change his religion," I am to observe that the decision in the case of Hutchi which was in the year 1873 shows that the law on this subject in operation in Mysore during the days of the British Commission was identical with what it is at the present day.

8. In these circumstances, I am to state that the Durbar consider that they would not be justified in proceeding with the matter further at present.

9. Turning now to the question of the applicability of the provisions of Hindu Law now under discussion to British subjects resident in the State, I am to state that so far no instance has occurred of a convert with a British Indian domicile having come by virtue of his residence in Mysore or otherwise under the operation of the Mysore Law—a circumstance which may be taken as indicating that such instances are not likely to be of frequent occurrence in the future. Any legislation undertaken with the object of providing a law for such cases would, in the opinion of the Durbar, be justly open to the objection that there is no practical necessity for it.

10. It would indeed be difficult to determine in what manner exactly any cases of conflict would present themselves in future. If they occur, the Durbar are advised that the result would not be very different from what it would be in British India, as the principles of Private International Law would govern such cases. It is perhaps only in relation to immovable property that the Local Law might possibly be applied so as to bring about a

different result from that in British territory; but even this is doubtful and it is possible that the Courts may find a way of avoiding the conflict. The Durbar feel that for such an exceptional and almost imaginary case, no special legislation is at present needed.

Order of His Highness the Maharaja

Draft B approved.

K. R. W.
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D. O. No. Fr. 2046, The Palace, Bangalore, 21st—25th January 1911.

My dear Sir,—

I return the file relating to disabilities of Indian Christians. As the wording of the draft is of considerable importance, I have taken the liberty of re-typing para 6 which has been altered and added to with His Highness' approval. You will note that His Highness has recorded his approval of the Draft B but he asks me to say that he approves of the modifications made in para 6.

He trusts that you also will approve of these.

As regards the remainder of draft B the emendations suggested are merely verbal and I have noted them in pencil. If you agree, the draft as finally revised may go to the Residency.

I think it well to emphasize what a particularly discreditable case the Tumkur one was from the point of view of the impartial observer and why the Missionaries refrained from taking the case up on appeal. So much has been made of the case by the Missionary bodies that it is just as well to let the Government of India realize the very sordid aspect of the case in the shape in which it was put before the Munsiff's Court. It would be a mistake to let the 1st and 3rd plaintiffs go down in official history as high-souled victims of Hindu caste prejudice.

Yours sincerely,
R. H. CAMPBELL.

T. Ananda Row, Esq., C.I.E.,
Dewan of Mysore.

11. *No. Pol. 718, dated 31st January 1911, to the First Assistant to the Hon'ble the Resident in Mysore, Bangalore.*

States that the Bill was brought before the Legislative Council Meeting held on 15th August 1910, with a motion for leave to introduce it but that the Council rejected the motion; gives a summary of the reasons that led the Council to do so; and states that on account of the decided opposition by the public against the Bill the Durbar consider that they would not be justified in proceeding with the matter further at present and that as regards the desirability of protecting the rights of the British Indian convert residing in Mysore, states that such cases of conflict of law are not likely to be of frequent occurrence in the future and that it is possible the Courts may find a way of avoiding a conflict when such cases do occur and that therefore the Durbar feel that, for such an exceptional and almost imaginary case, no special legislature is at present needed.

subjects residing in the Mysore State are not exposed to forfeiture while living in Mysore on the mere ground that they held religious views professed by other citizens but not the views which their Hindu fathers held.

Letter Fol. No. 648, dated the 4th February 1910, from the Secretary to Government, General and Revenue Departments, to the First Assistant to the Hon'ble the Resident in Mysore.

I am to express a regret that your letter No. 4936, dated 27th July 1909, on the subject of certain civil disabilities of Native Christians in Mysore, has not yet been formally answered. But the subject has been receiving the Durbar's unremitting attention as the Hon'ble the Resident is aware. **Serial No. 2.**

2. As desired in para 5 of your letter, I am directed to enclose a printed copy (with three spare copies) of the record in the Tumkur case referred to.

3. And in regard to the main question, I am to invite a perusal of para 56 of the Dewan's address to the Dasara Representative Assembly on 27th October last (copy enclosed) which will explain the position in which the question now stands. The measure will be dealt with in the Legislative Council in due course and I am to add that the result will be duly communicated to the Residency.

4. Futher consideration of that branch of the case which would relate to the rights of British Indian subjects resident in Mysore with religious views different from those which their Hindu fathers held will have to be undertaken on the result of the aforesaid reference to the Legislative Council being reached and the question need not be discussed at this stage.

Letter No. 889, dated Bangalore, 12th February 1910, from Major W. G. Grey, I.A., First Assistant to the Resident in Mysore, to the Dewan of Mysore.

I am directed to acknowledge the receipt of your letter Pol. No. 648, dated the 4th February 1910, regarding the civil disabilities of Native Christian converts in the Mysore State, and to state that the further communication promised in para 3 thereof will be awaited. **Serial No. 3.**

2. In the meantime, I am to invite attention to para 5 of this office letter No. 4936, dated the 27th July 1909, and to request that the Residency may be furnished as soon as possible with particulars of any cases similar to those of the Tumkur case, which occurred during the administration of the Mysore State by the British Government.

Letter No. 2523, dated the 26th February 1910, from the Secretary to Government, General and Revenue Departments, to the Registrar of the Chief Court of Mysore, Bangalore.

I am directed to request the favor of your furnishing Government as early as practicable with particulars of cases, if any, either in the file of the Chief Court, or in that of the Court of the Judicial Commissioner in Mysore or in the file of any of the Subordinate Courts similar to the case decided by the Munsiff of Tumkur in Original Suit No. 1016 of 1907, dated 2nd September 1907. (Printed copy enclosed for ready reference.) **Serial No. 4.**

The information is wanted only for the period during which the State was under British Administration. An early reply is requested.

Letter No. J. 2643, dated the 8th March 1910, from the Secretary to Government, General and Revenue Departments, to the Deputy Commissioner, Mysore.

From a perusal of the papers regarding the enactment of a law for the removal of disabilities arising from conversion in Mysore, it is seen that a representation of hardship based on real cases was made by the **Serial No. 5.**

Reverend Le Tohic of the Roman Catholic Mission in Mysore and that your predecessor in office had writen to the Government during 1901 or so a letter explaining the circumstances of the cases therein referred to. As this letter is not forthcoming in this office and as it is wanted here urgently for reference I am directed to request you to be so good as to forward to this office at a very early date a copy of the letter referred to above.

Letter No. 669—Enc. No. 1, dated Mysore 17th March 1910, from the Deputy Commissioner, Mysore, to C. S. Balasundaram Iyer, Esq., B.A., Officiating Secretary to the Government of His Highness the Maharaja of Mysore, General and Revenue Departments.

Serial No. 6.

With reference to your letter No. J. 2643—Legis. 28-09, dated 8th March 1910, calling for a copy of this office letter addressed to Government in 1901, or so, *in re* the representation made by the Reverend Le Tohic of the Roman Catholic Mission on behalf of the converted Christians in Mysore, I have the honor to state as follows:—

On a reference to the 'To' and 'From' Registers, maintained in this office, it was ascertained that no official communication was made on the subject. On a careful search being made in the records, an unsigned draft of a D. O., dated 21st November 1901, was found therein and I forward the same herewith for reference and kind return when no longer required. This was in reply to a D. O., dated 20th November 1901, received from Mr. M. Shama Rao, Assistant Secretary on duty with the Dewan.

Letter No. 4616—271, dated Bangalore 25th—26th April 1910, from the Registrar of the Chief Court of Mysore, to the Officiating Secretary to the Government, General and Revenue Departments.

Serial No. 7.

With reference to your letter No. J. 2523—Legis. 28-09, dated the 26thFebruary 1910, I am directed to state that no case similar to the one decided by the Munsiff of Tumkur in Original Suit No. 1016 of 1906-07 has been filed either in this Court or in that of the Court of the Judicial Commissioner or in the file of any of the Subordinate Courts in the State during the period the State was under British Administration.

Letter Pol. No. 972, dated 18th May 1910, from the Secretary to Government, General and Revenue Departments, to the First Assistant Resident in Mysore.

Serial No. 8.

I am directed to refer to para 2 of your letter No. 889 of the 12th February last on the subject of the removal of civil disabilities of Native Christian converts in Mysore and to state that no case similar to that decided by the Munsiff of Tumkur in Original Suit No. 1016 of 1906-07 was filed in the Court of the late Judicial Commissioner or in any of the Subordinate Courts of the State during the period of its administration by the British Commission.

Letter No. Political 718, dated the 31st January 1911, from the Secretary to Government, General and Revenue Departments, to the First Assistant to the Hon'ble the Resident in Mysore.

Serial No. 9.

I am directed to refer to the correspondence ending with my letter Political No. 648, dated 4th February 1910, on the subject of the disabilities of Christian converts in Mysore and to state as follows:-

2. In accordance with the intention expressed in para 3 of that letter, the Bill prepared in 1905 by Mr. Staley's Committee was brought before the Legislative Council at its meeting held on the 15th August 1910 with a motion for leave

to introduce the Bill, and with the intimation that it was not a Government measure in the sense in which that term is ordinarily understood and that official members were at liberty to vote on the motion according to their independent judgment. As will be seen from the enclosed copy of the report of the proceedings, the Council, after a lengthy discussion, rejected the motion.

3. The attitude of His Highness' Government at present in regard to this matter, I am to explain, is one of strict neutrality. It may be that the proposed legislation, if given effect to, may not result in any harm, as none has resulted in British India from the passing of Act XXI of 1850. But His Highness' Government cannot shut their eyes to the fact that there is very strong and deep-rooted objection on the part of the public to the proposed legislation. This has become manifest ever since the publication of the draft Regulation in 1905, and it is a significant fact that the opposition to the measure is shared by the Mahomedan, equally with the Hindu, population of the State. As regards the strength and genuineness of this opposition, it is sufficient to state that petitions signed by about 34,000 individuals (Hindus and Mahomedans) have been received against the measure, while the number of signatories to petitions in favour of it was only 2,078, (of whom only one was a non-Christian), that the opinion of the Mysore Representative Assembly taken on two different occasions (*vide* extracts appended), namely, in 1906 and in 1909, was emphatically against the measure, and lastly that the Legislative Council refused even to grant leave for the introduction of the Bill.

4. The grounds of this opposition on the part of the public may be briefly stated to be as follows. A change of religion on the part of a Hindu necessarily involves a definite loss of caste and a complete severance of all his former socialties and relationships. His wife will no longer consort with him, his parents and his children will no longer live with him. None of his relations or friends of the same caste will even dine with him or take water at his hands. If his children follow him into the new faith, they can never marry persons of their prior social circle. The convert thus becomes for all practical social purposes an utter alien to his family, friends and social circle; and this obtains not alone in the so-called superior twice-born castes but in every caste whether high or low. The close association above described between religion and social life prevents the Hindu from looking at the Bill from the purely abstract standpoint. In Hindu Law, the inheritance of property is intimately connected with the performance by the heir of the obsequies of the deceased owner. Whatever may be the criterion for determining the order of succession according to the Hindu Law as in force in Mysore—whether it is the principle of "Consanguinity" or the principle of "Religious efficacy"—it is admitted on all sides that inheritance and the performance of spiritual rites are very closely associated with each other. It is therefore impossible to alter the Hindu Law of succession without at the same time affecting the Hindu religious and social system on which that law is based. In the view of a Hindu, to grant the rights of inheritance and succession to a person who has given up the Hindu religion and his caste and has thereby rendered himself incapable of performing the ceremonial duties due to his deceased ancestors and cut himself off from the society in which he was born, would be to allow him the enjoyment of the privileges of a Hindu under the Hindu Law while releasing him from the obligations incidental to such privileges.

5. It is doubtless true that much of this opposition is due to nothing more than sentiment; but it is equally true that many of the arguments in support of the proposed legislation are also based only on sentiment. In Mysore, as elsewhere, a convert to Christianity enjoys as much protection to his personal property as any of his fellow-citizens professing a different religion. As a Christian he is not prevented from acquiring, holding, or disposing of property of any description, from pursuing any calling or holding any public office. It is only in certain matters of inheritance, succession, adoption, marriage and guardianship affecting a Hindu or a

Musalman as such, which are allowed—as in British India—to be regulated by the laws peculiar to each community, that the convert is debarred from exercising certain rights which are peculiar to the status which he has abandoned by his conversion and which affect others who remain Hindus or Musalmans as the case may be. Even under the existing Hindu Law, the position of the convert in respect of these matters is not in reality so bad as is sometimes represented. So far as ancestral or joint property is concerned, the convert can effectually secure his share therein by exercising, prior to his conversion, his undeniable right to enforce a partition of the family property. His own self-acquisitions he can always take with him. It is only the right of inheritance strictly so called, that is, the right of succeeding to property left by a decedent owner, that the Hindu Law does not concede to the convert.

6. Owing obviously to the extremely small number of cases in which the existing state of the law is felt as a hardship, the agitation in favour of legislation was dying out, but has again been revived by the judgment of the Munsiff's Court of Tumkur in the case referred to in para 4 of your office letter No. 4936, dated the 27th July 1909. This judgment brought out in a striking manner the contrast that exists between the position of a convert and that of a felon; but if the case had been taken in appeal, it is not impossible that the appellate Court would have held that a murderer (and that too one who murdered a member of the family) was a 'patita' (one who has fallen) and therefore liable to exclusion from inheritance. Unfortunately, there was no appeal and there was one very peculiar feature about the case which might well have alienated the sympathies of friends interested in the subject. The fact was that the first and third plaintiffs, who are now held up as victims to an unjust law, brought the suit in the guise of Hindus. They denied on oath that they were Christians, and Missionary witnesses had actually to be called on the other side to prove that they were baptised Christians. A great deal has been made of the fact that the only successful plaintiff was a Hindu felon and it is only fair to dwell on this other aspect, which deprives the two Christian plaintiffs of all moral claim to sympathy. It is not too much to say that they got only what they deserved and that the less said about the case as one of individual hardship, the better!

7. With reference to the surmise expressed in para 5 of your office letter of the 27th July 1909 referred to above, that during the period of the administration of the State by the Government of India, the principles of British justice which were expressed in Act XXI of 1850 may have "sufficed to prevent litigation for depriving a parent of his natural rights over his children or a proprietor of the control of his own property in the case of any Hindu who might change his religion," I am to observe that the decision in the case of Hutchi, which was in the year 1873, shows that the law on this subject in operation in Mysore during the days of the British Commission was identical with what it is at the present day.

8. In these circumstances, I am to state that the Durbar consider that they would not be justified in proceeding with the matter further at present.

9. Turning now to the question of the applicability of the provisions of Hindu Law now under discussion to British subjects resident in the State, I am to state that so far no instance has occurred of a convert with a British Indian domicile having come by virtue of his residence in Mysore or otherwise under the operation of the Mysore Law—a circumstance which may be taken as indicating that such instances are not likely to be of frequent occurrence in the future. Any legislation undertaken with the object of providing a law for such cases would, in the opinion of the Durbar, be justly open to the objection that there is no practical necessity for it.

10. It would indeed be difficult to determine in what manner exactly any cases of conflict would present themselves in future. If they occur, the Durbar are advised that the result would not be very different from what it would be in British

India, as the principles of Private International Law would govern such cases. It is perhaps only in relation to immovable property that the local law might possibly be applied so as to bring about a different result from that in British territory; but even this is doubtful and it is possible that the Courts may find a way of avoiding the conflict. The Durbar feel that for such an exceptional and almost imaginary case, no special legislation is at present needed.

ENCLOSURES.

Subject No. 9 of the subjects discussed before the Mysore Representative Assembly of 1909

LEGISLATION.

CONVERTS' DISABILITIES REMOVAL REGULATION.

Summary of discussion.—The idea embodied in the Regulation is repugnant to all the notions on which the devolution of property according to Hindu Law is based. A son who did not worship his father's gods could not claim his property as the Hindus believe that it should descend only to those heirs who would keep up the family custom. The position of the convert was very illogical as he wanted only the benefits of his inheritance without the corresponding obligations. Further, the cases of conversion are very rare and do not justify legislation against the unanimous opinion of the public. The proposed legislation is inconsistent with the policy of religious neutrality laid down in the Queen's Proclamation of 1858, and reiterated in His Majesty's message in 1908.

One member expressed a fear that the Regulation might be passed in spite of public opinion if the official majority voted for it; and the Dewan remarked that it was not the intention of Government to treat the measure as an official Bill which the official members were bound to support. The official members would be allowed the liberty to vote according to their own individual opinions.

In response to a call from the Dewan for the views of the Mahomedan members of the Assembly, Mr. Dervish Peer said that the Koran disinherited all converts and that even a convert to Islam lost all his pre-Islamic rights. The Mahomedans were against the proposed measure and joined the rest of the Assembly in protesting against it.

Mr. Pilkington who was invited to express his opinion stated that he recognised that there was a strong body of public opinion against the measure; but Hinduism, more than other faiths, was always tolerant of other beliefs. The present law interfered with liberty of conscience and was unworthy of best traditions of Hinduism. He thought that a child's birth-right should not be taken away simply on account of a change of religion, but the father had a full right to will away his personal property from the son, if so disposed.

One of the members stated that there was not a single person in the Assembly who would support the measure: and the whole assembly stood up as agreeing with the statement.

Subject No. 1 of the subjects discussed before the Mysore Representative Assembly of 1906

LEGISLATION.

CONVERTS' DISABILITIES REMOVAL REGULATION.

Reply of Government.—The main point is that the general sentiment of the Assembly is distinctly against the passing of the proposed measure; and this will be duly noted.

subjects residing in the Mysore State are not exposed to forfeiture while living in Mysore on the mere ground that they held religious views professed by other citizens but not the views which their Hindu fathers held.

Letter Pol. No. 648, dated the 4th February 1910, from the Secretary to Government, General and Revenue Departments, to the First Assistant to the Hon'ble the Resident in Mysore.

I am to express a regret that your letter No. 4936, dated 27th July 1909, on the subject of certain civil disabilities of Native Christians in Mysore, has not yet been formally answered. But the subject has been receiving the Durbar's unremitting attention as the Hon'ble the Resident is aware. **Serial No. 2.**

2. As desired in para 5 of your letter, I am directed to enclose a printed copy (with three spare copies) of the record in the Tumkur case referred to.

3. And in regard to the main question, I am to invite a perusal of para 56 of the Dewan's address to the Dasara Representative Assembly on 27th October last (copy enclosed) which will explain the position in which the question now stands. The measure will be dealt with in the Legislative Council in due course and I am to add that the result will be duly communicated to the Residency.

4. Futher consideration of that branch of the case which would relate to the rights of British Indian subjects resident in Mysore with religious views different from those which their Hindu fathers held will have to be undertaken on the result of the aforesaid reference to the Legislative Council being reached and the question need not be discussed at this stage.

Letter No. 889, dated Bangalore, 12th February 1910, from Major W. G. Grey, I.A., First Assistant to the Resident in Mysore, to the Dewan of Mysore.

I am directed to acknowledge the receipt of your letter Pol. No. 648, dated the 4th February 1910, regarding the civil disabilities of Native Christian converts in the Mysore State, and to state that the further communication promised in para 3 thereof will be awaited. **Serial No. 3.**

2. In the meantime, I am to invite attention to para 5 of this office letter No. 4936, dated the 27th July 1909, and to request that the Residency may be furnished as soon as possible with particulars of any cases similar to those of the Tumkur case, which occurred during the administration of the Mysore State by the British Government.

Letter No. 2523, dated the 26th February 1910, from the Secretary to Government, General and Revenue Departments, to the Registrar of the Chief Court of Mysore, Bangalore.

I am directed to request the favor of your furnishing Government as early as practicable with particulars of cases, if any, either in the file of the Chief Court, or in that of the Court of the Judicial Commissioner in Mysore or in the file of any of the Subordinate Courts similar to the case decided by the Munsiff of Tumkur in Original Suit No. 1016 of 1907, dated 2nd September 1907. (Printed copy enclosed for ready reference.) **Serial No. 4.**

The information is wanted only for the period during which the State was under British Administration. An early reply is requested.

Letter No. J. 2643, dated the 8th March 1910, from the Secretary to Government, General and Revenue Departments, to the Deputy Commissioner, Mysore.

From a perusal of the papers regarding the enactment of a law for the removal of disabilities arising from conversion in Mysore, it is seen that a representation of hardship based on real cases was made by the **Serial No. 5.**

Proceedings of the Government of His Highness the Maharaja of Mysore.

Converts' Disabilities Removal Bill.

CONFIDENTIAL.

FILE No. 28 OF 1909-10.

Letter No. 4936, dated Bangalore, 27th July 1909, from T. B. Copeland, Esq., I.C.S., First Assistant to the Resident in Mysore, to the Dewan of Mysore.

I am directed to address the Durbar regarding the civil disabilities of Native Christian converts in the Mysore State. **Serial No. 1.**

2. It appears that by a decision of the Chief Court of Mysore in Appeal Case No. 149 of 1893 (Dasappa *v.* Chikamma) which was heard in December 1894, the plaintiff and appellant father was refused the custody of his minor children on the ground of his apostacy from the Hindu faith. In the words of the judgment delivered by Mr. Ramachandra Iyer, the view was adopted that "the Hindu "law makes an apostate lose his civil rights, justifies the wife if she chooses to "live separately from him, and empowers his sons to divide his property among "them. It was to remove these disabilities that Act XXI of 1850 was passed, "and it being admitted that that Act has not been extended to the Province, we "have no right to declare that the disabilities do not exist."

3. Since the declaration of the law in the Mysore State as thus laid down, the question of introducing into the State legislation on the lines of Act XXI of 1850 has been discussed, and meanwhile in the Civil and Military Station of Bangalore, which is under the jurisdiction of the British Government, the Act has been applied. As regards the territories governed by His Highness the Maharaja of Mysore, the Secretary of State (Lord George Hamilton) expressed, in 1902, the hope that His Highness, after his accession to administrative power, might find himself able to introduce changes in the direction of mitigating disabilities arising from a change of religion.

4. It is understood that another case was decided, on the 2nd September 1907, in the Tumkur Munsiff's Court in which a Hindu and one of his sons, who had changed their religion, were held not to be entitled to sue for a declaration of their proprietary rights, which rights were adjudged to belong to another son undergoing penal servitude by reason only of his continued profession of the Hindu faith. No appeal was preferred, which, it is presumed, may be accounted for by the decision of the Chief Court referred to above. The question of legislation has thus been revived.

5. At the instance of His Majesty's Secretary State for India, I am to request that this Residency may be furnished with the record of the Tumkur case referred to and at the same time informed whether, during the long administration of the Mysore State by the Government of India, any cases of a similar character were brought before the Courts, and, if so, how they were decided. If during that period the principles of British justice which were expressed in the Act XXI of 1850 sufficed to prevent any such litigation for depriving a parent of his natural rights over his children, or a proprietor of the control of his own property in the case of any Hindu who might change his religion, then the reversion to such penalties after so long an interval constitutes a strong reason for legislation. For, it cannot be denied that these disabilities are inconsistent with the established principles of modern justice, as well as with the law of British India. Both the Secretary of State and the Government of India, however, consider that the matter should be left at this stage to the discretion of His Highness the Maharaja. But if His Highness' Government decline to legislate, I am to ask to be favored with a full statement of their reasons, for submission to the Secretary of State. It would be necessary, in any case, to ensure that the fundamental rights and liberties of British